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KONRAD RAYNES & VICTOR, LLP
ATTN: IBM37
315 SOUTH BEVERLY DRIVE, STE. 210
BEVERLY HILLS, CA 90212

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In re Application of :
CHRISTOPHER J. STAKUTIS et al :
Application No. 09/309,453 : DECISION ON PETITION
Filed: May 11, 1999 :
Attorney Docket No. SJO919970205US2 :

This is a decision on the petition under 37 CFR 1.182 filed September 13, 2011, to withdraw information from the above identified application. This is also a decision on a petition to expedite the petition decision under 37 CFR 1.182, filed September 26, 2011.

The petition filed under 37 CFR 1.182, to expedite, is **GRANTED**.

The petition filed under 37 CFR 1.182 to withdraw a Terminal Disclaimer is **DISMISSED**.

Petitioners assert that, the terminal disclaimer filed July 10, 2000 over patent 5,995,097 was erroneously filed since the patent had neither common owner nor a common inventor with the present patent 6,161,104.

On October 21, 1999, the examiner in charge of the application rejected claims 1-40 under the judicially created doctrine of double patenting over claims 1-39 of U.S. Patent No. 5,950,203. In the response filed on April 24, 2000 applicant's attorney noted the obviousness-type double patenting issue raised by the examiner but requested that such issue be addressed later during prosecution in view of the amendments, and after allowable subject matter.

On May 8, 2000, the examiner issued a final rejection that rejected claims 1-16 under the judicially created doctrine of double patenting over claims 2-5, 7, 9, 11-13, and, 15 of U.S. Patent No. 5,995,097.

In response to the final rejection mailed May 8, 2000, on July 10, 2000 applicant submitted a terminal disclaimer over 5,995,097. However, applicant indicated in the remarks of the amendment submitted with the response, that a terminal disclaimer was being filed over commonly assigned U.S. Patent 5,950,203.

On July 24, 2000, the examiner allowed the application and on December 12, 2000, upon receipt of the drawings and payment of the issue fee, the application issued as U.S. Patent No. 6,161,104.

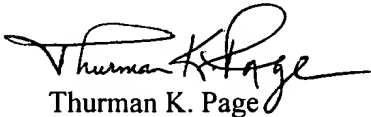
On September 8, 2011, petitioner filed a terminal disclaimer over U.S. Patent No. 5,950,203.

On October 1, 2011, the Terminal Disclaimer filed September 8, 2011 was accepted.

Petitioner now request withdrawal of the terminal disclaimer filed July 10, 2000.

A review of the file history indicates that during prosecution of the instant application, a proper response to the examiner's final rejection of May 8, 2000 necessitated a Terminal Disclaimer, Request for Continued Application, continuation, or if applicant disagreed, a Notice of Appeals to the Board of Appeals and Patent Interferences. Since applicant chose to file a Terminal Disclaimer, applicant cannot now after allowance allege an improper rejection, and on that basis request that a necessary Terminal Disclaimer be withdrawn. Prosecution of the merits of the application ended at the time of the mailing of the Notice of Allowance. Hence applicant cannot more than ten years later request changes to the file regarding the merits of a previous rejection. Accordingly, the request to withdraw the Terminal Disclaimer is dismissed.

Telephone inquiries related to this decision should be addressed to the undersigned at (571) -272-0602.

A handwritten signature in black ink, appearing to read "Thurman K. Page". The signature is fluid and cursive, with the first name "Thurman" and last name "Page" clearly distinguishable.

Thurman K. Page
Petitions Examiner
Office of Petitions